IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:27-04-2007

Coram :

The Hon'ble Mr. Justice F.M.IBRAHIM KALIFULLA
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.29588 of 2004

G.Umasekaran ... Petitioner

Vs.

1. State of Tamil Nadu rep.
   by Secretary to Government
   Home [Transport II] Department,
   Fort St. George,
   Chennai - 600 009.

2. The Transport Commissioner
   Chepauk,
   Chennai - 600 005.

3. Tamil Nadu Administrative Tribunal
   Chennai - 600 104.
   rep. by its Registrar. .. Respondents

Writ Petition, seeking certiorarified mandamus is filed by the petitioner, under Article 226 of the Constitution of India, for direction to call for the records, of the third respondent / Tamil Nadu Administrative Tribunal, relating to its order, dated 15.04.2004, made in O.A.No.3570/2003, whereby the order passed by the first respondent in G.O. (2D) No.358, Home [Transport] Department, dated 21.10.2003 was sought to be quashed with a prayer to issue consequential directions to the respondents 1 and 2 to reinstate the petitioner in service with all consequential service and monetary benefits.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.V.Viswanathan, AGP

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O R D E R

(Order of the Court was made by S.TAMILVANAN, J.)

Aggrieved by the order, dated 15.04.2004, passed in O.A.No.3570 of 2003 by the Tamil Nadu Administrative Tribunal, Chennai, the petitioner herein has preferred this writ petition.

2. The petitioner herein Thiru.G.Umasekaran was formerly working as Regional Transport Officer at Coimbatore, Erode and Madurai. During the relevant period from 01.03.1986 to 31.12.1990, while working as Regional Transport Officer, he was charged for abusing his official position, by corrupt practice, and acquired assets in the form of movable and immovable properties in his name and also in the name of his wife to an extent of Rs.3,99,645.24/- disproportionate to the known sources of his legitimate income.

3. It was alleged by the second respondent that the petitioner had constructed a house, bearing D.No.12 and 13, at Anaikaran Thottam, Ganapathy Village, Coimbatore in the name of his wife Tmt.U.Manimozhi, during the year 1989-1990, without getting permission from the competent authority, as required under Rule 7 (i) of Tamil Nadu Government Servants Conduct Rules, 1973. He failed to obtain prior permission from the Department for purchasing a house bearing Door No.178, Lakshmi Mills Colony, P.N.Palayam, Coimbatore in the name of his wife in February 1989, thereby violating Rule 7 (1) of Tamil Nadu Government Servants Conduct Rules, 1973.

4. On the aforesaid charges, the concerned Disciplinary Authority, had conducted enquiry, 27 witnesses were examined on the side of the prosecution and 2 witnesses were examined on the side of the writ petitioner as defence witnesses.

5. The Tribunal for Disciplinary Proceedings, considering the evidence of both sides, has held that the charges are proved, for which given the following reasons :

I. There is no evidence to prove that his wife received loans from Thiru.C.V.Ramiah and Thiru.S.Kannan without any interest for construction of house at Ganapathy Village .

II. There is no evidence to prove that the D.O's wife had independent earning on regular basis nor she had had her own sources of income.

III. She was used as a facade by the delinquent officer to cover up his illegal income, since she cannot be credited with the construction of two houses on her own without the assistance of her husband.

IV. The income returns were filed in 1987 in a hurried manner by the D.O's wife.

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V. The income of his wife prior to the period covered under income tax returns was not shown in any property statement.

VI. Therefore, the so called income at the beginning of the check period projected by the delinquent officer based on the income tax return is either already or there was no income at all.

VII. The claim of the D.O. Relating to rental income and rental advance prior to the check period cannot be taken into account, unless it is definitely proved by documentary or acceptable evidence.

6. The petitioner herein offered his further representation as follows :

I. The house at Erode was acquired on 23.05.1975 i.e., before the check period. But, the Tribunal has failed to consider the income derived from the house.

II. His wife, Tmt.Manimozhi has obtained a loan of Rs.1,20,000/- from CANFIN Housing construction towards the construction of her house.

III. Her father has paid Rs.1,30,000/- to her being a share in her father's property.

IV. The value of the buildings has been fixed much higher than the rates prevailed before 10 years.

7. The Tribunal for Disciplinary Proceedings, after conducting enquiry, sent its reports, dated 27.10.1999 to the first respondent / Secretary to Government , Home [Transport II] Department, Chennai, wherein the enquiry officer has held that charge No.1 had been partly proved and other two charges were fully proved. Based on which, the first respondent, by his letter dated, 01.12.1999 in Letter No.117721 / Transport II / 99-1 furnished copy of the enquiry report to the petitioner and provided opportunity to make his representations. Accordingly, the petitioner submitted his written representation, dated 12.01.2000, disputing the findings of the Tribunal for Disciplinary Proceedings. After considering the representations made by the petitioner, the first respondent held that there is no merit in the appeal and thereby dismissed the same and hence, the petitioner filed O.A.No.3081/2003, on the file of the Tamil Nadu Administrative Tribunal. The Tamil Nadu Administrative Tribunal, by its order, dated 11.09.2003 in O.A.No.3081/2000, issued directions to the Government to pass final orders, within a period of three months. Thereupon, the first respondent in G.O. (2D) No.358, Home [Transport II] Department, dated 21.10.2003, passed final orders, after consulting the Tamil Nadu Public Service Commission in the matter, imposing the penalty of compulsory retirement to the petitioner from service. Aggrieved by the said order, the petitioner preferred O.A.No.3570/2003 on the file of the Tamil Nadu Administrative Tribunal, which was dismissed by its order, dated 15.04.2004 on merits. Aggrieved by which, the petitioner has filed this writ petition.

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8. According to Mr.M.Ravi, learned counsel for the petitioner, though as per charge No.1, the petitioner is alleged to have acquired assets in the form of movable and immovable properties in his name and also in the name of his wife to the extent of Rs.3,99,645.24/- disproportionate to his known sources of income, the tribunal for Disciplinary Proceedings has assessed the value of the property only at Rs.1,37,725.42/- and held the other two charges have been proved against the petitioner, under Rule 7 (1) of Tamil Nadu Government Servants Conduct Rules, 1973 and hence, the finding is not sustainable. According to the learned counsel for the petitioner, the third respondent, Tamil Nadu Administrative Tribunal has erroneously held that the findings of the Tribunal for Disciplinary Proceedings are based on evidence and the conclusion arrived at was not perverse.

9. Further, the learned counsel submitted that initially in the year 1995, notice was issued on the petitioner by the Department, alleging that there was disproportionate wealth acquired by him to the tune of Rs.23,301/- and subsequently, notice, dated 25.08.1995 was issued, holding that there was disproportionate wealth of Rs.4,18,645.24/- and the Government order was issued on 30.09.1996, referring the matter to the Tribunal for Disciplinary Proceedings for enquiry, on the basis of the final report of the Vigilance and Anti corruption Department, wherein it was alleged that there was disproportionate wealth of Rs.3,99,645.24/-. The finding of the Tribunal for Disciplinary Proceedings was that there was only disproportionate wealth to the tune of Rs.1,37,725.42/- and hence, the Department was not very clear on the allegations made against the petitioner and therefore, the learned counsel submitted that the entire proceedings are liable to be quashed, as not sustainable in law.

10. It is seen from the records that following charges have been framed against the petitioner herein :

> " Charge – I : The actuated by corrupt motive and in abuse of his (Accused Officer's) official position and authority, while he (Accused Officer) was working as Motor Vehicle Inspector Grade – I at the office of Regional Transport Officer at Coimbatore, Erode and Madurai during the check period of 01.03.1986 to 31.12.1990, had acquired assets in the form of movable and immovable properties (such as house, house sites, buildings etc) in his name and on his behalf in the name of his wife Tmt.U.Manimozhi to the extent of Rs.3,99,645.24/- (Rupees Three lakhs ninety nine thousand six hundred and forty five and paise twenty four only) which are found to be disproportionate to the known sources of his (Accused Officer's) legitimate income and which he (Accused Officer) had not satisfactorily accounted for and thereby he (Accused Officer) had failed to maintain absolute

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integrity and devotion to duty in Government Service and conducted himself in a manner unbecoming of Government Servant.

Charge - II : That he (Accused Officer) had constructed a house in Door Nos.12 and 13 in S.F.No.257 at Anaikaran Thottam, Ganapathy Village, Coimbatore District in his wife's name during 1989-1990 without getting prior permission from the competent authority as per Rule 7 (1) of Tamil Nadu Government Servants' Conduct Rules 1973 and thereby he had failed to maintain absolute integrity and devotion to duty in Government Service and conducted himself in a manner unbecoming of a Government Service.

Charge - III : That the (Accused Officer) had failed to obtain prior permission from the department for the purchase of the house in D.No.178, Lakshmi Mills Colony, P.N.Palayam, Coimbatore in the name of his (Accused Office's) wife Tmt.Manimozhi in February 1989 as per Rule 7 (1) of the Tamil Nadu Government Servants' Conduct Rules 1973 and thereby he had failed to maintain absolute integrity and devotion to duty in Government Service and conducted himself in a manner unbecoming of a Government Servant. "

11. According to Mr.V.Viswanathan, learned Additional Government Pleader appearing for the respondents, based on the departmental enquiry, it was held that the charges levelled against the petitioner were proved. Accordingly, punishment of compulsory retirement was imposed by the first respondent on the petitioner. In the application preferred before the Administrative Tribunal, the petitioner herein has raised the same plea that the rental income of the petitioner was not taken into account and the sources of income of the petitioner's wife and that the property standing in the name of his wife was purchased by herself, from and out of her own resource were not taken into consideration. The main charge against the petitioner is that he acquired properties, movable and immovable disproportionate to his known sources of his income and he was motivated by corrupt practice. According to the learned counsel for the respondents, the Tamil Nadu Administrative Tribunal has passed the impugned order, based on evidence and proper finding and hence, the same cannot be assailed by the petitioner.

12. Mr.M.Ravi, learned counsel appearing for the petitioner submitted that the Administrative Tribunal has not considered the defence raised by the petitioner, since the petitioner was not able to give account, only for Rs.1,37,725.42/- and not for the sum of Rs.3,99,645.24/-, as per the first charge. According to the learned counsel for the petitioner, there is manifest error in the order passed by the Administrative Tribunal and

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according to him, the findings given by the Tribunal is not based on evidence and therefore, it has to be construed only as perverse finding and as such, the writ petition has to be allowed, setting aside the impugned orders of the Tribunal and the authorities. In support of his contention, the learned counsel cited the following decisions :

1. Kuldeep Singh vs. Commissioner of Police, (1999) 2 SCC 10
2. Bank of India vs. Degala Suryanarayana, (1999) 5 SCC 762.

13. In the decision, Kuldeep Singh vs. Commissioner of Police, reported in (1999) 2 SCC 10, the Hon'ble Supreme Court has ruled as follows:

> "6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority."

As per this ruling, normally the High Court and the Apex Court will not interfere with the findings of fact recorded at the domestic enquiry and if the findings of guilt is based on no evidence, or if it is construed as perverse, then the same would be amenable to judicial scrutiny. Therefore, as laid down by the Hon'ble Supreme Court, there is a broad distinction between proper decisions and the decisions based on perverse finding. As per the rulings of the Hon'ble Apex Court, if there is no evidence or the evidence, which is thoroughly unreliable and no reasonable person would act upon it, the order could be construed as perverse, but if there is some evidence on record, which is acceptable and which could be relied upon, howsoever compendious, it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.

14. In the decision, Bank of India vs. Degala Suryanarayana, reported in (1999) 5 SCC 762, the Hon'ble Supreme Court has held as follows :

> "11. Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent

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officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceeding excepting in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority..."

15. According to Mr.V.Viswanathan, learned Additional Government Pleader appearing for the respondents, in the instant case, there is no perverse finding in the departmental enquiry, as ruled by the Hon'ble Apex Court and only based on the evidence available on record, it was decided by the authority that the charges framed against the petitioner have been proved. As per the findings of the Tribunal, apart from movable properties, the petitioner and his wife have acquired 3 properties, all situated in Coimbatore. He purchased a vacant land comprising Door Nos.12 and 13 in S.F.No.257 at Anaikaran Thottam, Ganapathy Village, Coimbatore District and constructed a house between the years 1989-90. He has also purchased a house, bearing D.No.178, Lakshmi Mills Colony, P.N.Palayam, Coimbatore and these two properties have been purchased by the petitioner in the name of his wife Mrs.U.Manimozhi. As per the charges framed against him, the petitioner built up house, without obtaining permission from the Government and he has also taken the sale deed in the name of his wife, without obtaining prior permission, as required under Rule 7 (1) of the Tamil Nadu Government Servants' Conduct Rules, 1973.

16. On a perusal of the enquiry report and findings of the Tribunal, we are of the considered view that the findings are supported by evidence. P.Ws. 1 to 3 are persons who are in occupation of shops situated in Pettavaithalai belonging to the petitioner's father and they have subsequently purchased the same from the petitioner, by paying consideration of Rs.56,000/-. The said amount has been accounted for by the petitioner, for having paid as sale consideration for the purchase of property by himself and his wife, as found by the Tribunal.

17. It is seen that in the defence evidence adduced for the petitioner, , it has been stated that the petitioner's wife was provided with a sum of Rs.1,20,000/- by her parents. As held by the Tribunal, the petitioner's wife was examined as P.W.20, her mother was also examined as P.W.19, but the oral evidence of the petitioner and the other defence witness would not be sufficient to hold that the properties were purchased

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by the petitioner's wife from and out of her own sources of income. Therefore, we are of the considered view that there is no perverse finding with regard to the same.

18. It is relevant to refer Rule 7 (1) (a) of the Tamil Nadu Government Servants' Conduct Rules, 1973, which reads as follows :

> " 7 (1) (a) : No Government servant shall, except after notice to the prescribed authority, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift, exchange or otherwise either in his own name or in the name of any member of his family."

19. Rule 7 (1) (b) of the said Rules reads thus :

> "7 (1) (b) : Every Government servant, for the construction or extension or acquisition of a house, shall report to the prescribed authority in the following manner :-
>
> (i) before stating the construction or extension or entering into transaction for acquisition of a house either from out of loan or advance from the Government or others or part final withdrawal from the Provident Fund, he shall obtain previous sanction of the prescribed authority in Form VI or VI-A, as the case may be, in Schedule I appended to these rules.
>
> (ii) after completing the construction or extension, he shall report to the prescribed authority in Form VII in Schedule I appended to these rules.
>
> The details in Forms VI and VII in schedule I appended to these rules shall be furnished wherever it is possible to do so. Where, however, it is not possible to furnish details, the Government servant shall mention the covered area on which the building is erected or proposed to be erected, and the estimated cost of the building."

20. The property was admittedly purchased in the name of the wife of the petitioner, and as per Rule 7 (1) of the Tamil Nadu Government Servants' Conduct Rules, 1973, it is clear that the petitioner should have given notice to the prescribed authority, prior to the acquisition of property. But, in this case, the aforesaid provision was not complied with by the petitioner. The alleged gift amount paid by the parents of the petitioner's wife was disbelieved in the departmental proceedings. The above finding cannot be construed as erroneous. Considering the order passed by the first respondent with reference to the evidence available on record, the Administrative Tribunal, has upheld the finding that the charges levelled against the petitioner have been proved and the

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punishment of compulsory retirement as proportionate one, on the facts and circumstances of the case.

21. As per the findings of the respondents, based on evidence, there was disproportionate assets to the tune of Rs.1,37,725.42/- and the respondents have disbelieved the contention that the petitioner and his wife had borrowed Rs.1,20,000/-, as there is no legally acceptable evidence on the side of the petitioner for the alleged borrowing.

22. In view of the Rule 7 (1) of the Tamil Nadu Government Servants' Conduct Rules, 1973 and in the light of the decisions of the Hon'ble Apex Court referred above, we are of the considered view that the finding of the departmental proceedings and the decision of the respondents are based on evidence available on record and there is no perverse finding. Hence, the impugned order in the writ petition warrants no interference of this Court and hence, the writ petition fails and the same is liable to be dismissed.

23. In the result, the writ petition is dismissed. No order as to costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

tsvn

To

1. The Secretary to Government
   Home [Transport II] Department,
   State of Tamil Nadu
   Fort St. George,
   Chennai - 600 009.

2. The Transport Commissioner
   Chepauk,
   Chennai - 600 005.

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1 cc To The Government Pleader, SR.29991.
1 cc To Mr.M.Ravi, Advocate, SR.29604.

W.P.No.29588 of 2004

AKR(CO)
RVL 07.06.2007

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